

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

WILLIAM E. HUDSON and
VANESSA L. HUDSON,
Defendants and Counterclaim
Plaintiffs Below, Appellants,

Vs.

C.A. No. 2005-11-126

RAYMOND HALL and
PATRICIA HALL,
Plaintiffs and Counterclaim
Defendant's Below, Appellees,

Vs.

NADENE JEFFERSON and
REHOBOTH SHORES,
Third Party Defendants Below,
Appellees,

and

MELISSA WATTS,
Third Party Defendant Below,
Appellee.

Submitted: January 3, 2007
Decided: January 16, 2007

DECISION

On December 4, 2006 the Court heard the motion to Dismiss Counterclaim and Third Party Complaint filed by Appellees Raymond and Patricia Hall, and Melissa Watts in the above-captioned *de novo* appeal.

Appellants William and Vanessa Hudson failed to appear at the hearing, despite being mailed notice of the motion on November 20, 2006, according to the certificate of service, and despite filing a response to the motion. Notwithstanding Appellants' failure to appear, the Court heard Appellees' presentment of its motion. After consideration of the motion pleadings and response thereto, and the arguments of counsel at the hearing, the Court held that the Appellants' Counterclaim and Third Party Complaint set forth issues and claims not presented in the Court below. Therefore, the Counterclaim and Third Party Complaint violated the "mirror image rule" and *Civil Rule 72.3 (c)*: "An appeal to this court that fails to join the identical parties and raise the same issues that were before the court below shall result in a dismissal on jurisdictional grounds." The Counterclaim and Third Party Complaint sets forth, *inter alia*, claims for fraud that were not before the Court below. Therefore, the Court granted the Appellees' Motion to Dismiss.

On December 11, 2006 Appellants filed a Motion for Relief from the aforesaid dismissal. On January 3, 2007 the Appellees responded to the Motion for Relief. Appellants' claim they are entitled to relief because they were not aware of the December 4, 2006 hearing, and that their failure to appear "was a mistake on someones part other than themselves." A review of the record, however, clearly demonstrates that the Notice of Motion setting forth the December 4, 2006 date and time of the hearing was served upon the Appellants by the Appellees by First Class U.S. Mail

on November 20, 2006 at the address last provided by Appellants. Appellants have not demonstrated mistake, inadvertence or excusable neglect justifying relief. *Civil Rule 60 (b) (1)*. Further, even if the Appellants had been present at the hearing, the Court would have granted the motion inasmuch as the Counterclaim and Third Party Complaint, on its face, sets forth claims on appeal *de novo* that were not before the Justice of the Peace Court in the original action.

For the foregoing reasons, the Appellants Motion for Relief is **DENIED**, and the Third Party Complaint and Counterclaim against Appellees the Halls and Melissa Watts is **DISMISSED**.

IT IS SO ORDERED THIS 16TH DAY OF JANUARY, 2007.

Kenneth S. Clark, Jr., Judge